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10/31/2006

By: Conrad O. Gardner

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Conrad O. Gardner

Group Art Unit: 3611

Application No.: 08/896,514

Examiner: Daniel Yeagley

Filing Date: 06/23/97

Date: October 29, 2006

For: EXTENDED RANGE MOTOR VEHICLE HAVING AMBIENT POLLUTION  
PROCESSING

Attention: Board of Patent Appeals and Interferences  
Assistant Commissioner for Patents  
Alexandria, Va. 22313-1450

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OCT 31 2006

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

**37 CFR 41.52 REHEARING (a)(1)**

Sir:

Appellant files this single request for rehearing with respect to Claims 55 and 59 over Lynch (U.S. Patent No.4,165,795) in view of fast charge-discharge batteries under 35 USC 103 within two months of the Decision on Appeal dated October 20, 2006. This request for rehearing states with particularity the points believed to have been misapprehended or overlooked by the Board.

**INTRODUCTION**

The Board of Appeals correctly characterizes appellants invention as relating to "a method of operating a hybrid vehicle having an electric motor and an internal combustion engine and a fast charge-discharge battery, wherein, in certain situations, power from the internal combustion engine is rapidly captured to charge the fast charge-discharge battery and, in other situations, the fast charge-discharge battery powers the electric motor to contribute torque, and hence acceleration."(pages 2-3 of the Decision).

Such system operation where a decision is made to utilize an internal combustion engine to charge a battery or utilize the battery to power an electric motor is defined in appellants claim 37, however the specific use of a fast charge-discharge battery as

pointed out as part of appellants invention in a hybrid system as defined in claims 55 and 59 has not been allowed. This coverage is needed to round out the protection afforded for appellants invention.

### **MISAPPREHENSION BY THE EXAMINER AND CONSEQUENTLY OVERLOOKED BY THE BOARD**

#### **I**

### **THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE**

The Lynch system is designed as a load leveler for a lead acid battery pack to accommodate the energy requirements of a particular mission, e.g. the system can be adjusted so the batteries are fully charged at the beginning of a mission and discharged at the end (column 9 of Lynch). Substituting a fast charge-discharge battery would render load leveling unnecessary. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

### **THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF THE SYSTEM**

Claims 55 includes among other features in a hybrid vehicle, the charging of a fast charge-discharge battery while claim 59 includes among other features, the powering of a hybrid vehicle utilizing a fast charge-discharge battery. No hybrid motor vehicle systems of the present invention can suffer the limitations to the fast charge-discharge battery operation in the invention as defined in the methods of operation claims 55 and 59 of load leveling as Lynch, restricting the freedom of operation as defined. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

### **PIONEER PATENT**

### **THE LONG FELT PROBLEM OF THE LIMITED RANGE OF LEAD ACID BATTERY OPERATED MOTOR VEHICLES SOLVED**

Applicants system as defined by the Board and as stated in the INTRODUCTION is common subject matter in applicants prior and present cases providing extended range over lead acid powered vehicles in use since the 1900's (including Lynch albeit in a hybrid configuration utilizing load leveling). The limited range remained unsolved over a long period of time until disclosure of the present system including such features as defined in claims 55 and 59.

Claims 55 and 59 define increased charge and acceleration not possible in hybrids of lead acid design including Lynch which has resulted in commercial success of present day hybrids utilizing fast charge-discharge batteries. Commercial success itself being a secondary consideration adding to objective evidence of patentability. This well recognized success of hybrids made possible by applicants contribution to the

advancement of the state of the art has lead to increased efficiencies and a reduction in smog-forming emissions contributing to the decrease in global warming.

The Examiners of the USPTO clearly recognized in the citations in many office actions whose comments regarding the present system are found in the many file histories, the present systems status as to later discoveries sought to be patented. The Affidavit of applicant clearly points out through the use of graphs the relationship between Pioneer Patents and the present system number of citations and consequent application of the Doctrine of Equivalents (further learned articles have been published on the subject).

### CONCLUSION

It is believed that upon Rehearing the Board of Appeals will find claims 55 and 59 clearly allowable within the meaning of 35 USC 103 and worthy of patent protection.

Respectfully submitted,



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